IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3365 of 2000
with
SPECIAL CIVIL APPLICATION No 3366 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ATULKUMAR RAVINDRAKUMAR KHANDELWAL

Versus

TRANSPORT COMMISSIONER 3RD SPECIAL LAND ACQUISITION

Appearance:
1. Special Civil Application No. 3365 of 2000
MR DK NAKRANI for Petitioner No. 1
MR BY MANKAD,AGP for Respondent Nos. 1-2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/09/2000

ORAL JUDGEMENT

1. Rule. Mr.B.Y.Mankad, learned AGP waives service

of rule for the respondents.

2. The grievance made in the petition is that without any authority of law, the Officers of the respondent - Department are coercing the petitioner for payment of penalty/fine on the ground that the petitioner has committed breach of the conditions of the contract carriage permit by plying his vehicle for the purpose of stage carriage. It is further submitted that even if the respondent - Department makes such an allegation about breach of Sec.192-A, of the Motor Vehicles Act, 1988 (for short the "Act") at the most, the petitioner is liable to be prosecuted, but the offence punishable under Sec.192-A of the Act is not compoundable. The offence punishable under Sec.192-A of the Act is not included in the list of such compoundable offences.

3. In reply, Mr.B.Y.Mankad appearing on behalf of the respondent - Department relies on the averments made in the reply affidavit and submits that in view of the language of Sub-Sec.(5) of Sec.86, the respondent authority may in lieu of suspension or cancellation of permit, compound the offence relating to the permit. Mr.Mankad also contends that although the offence punishable under Sec.192-A of the Act is not compoundable under Section 200 of the said Act, Sub-Sec.(5) of Sec.86 of the Act confers powers on the transport authority to permit compounding of offences relating to the permit in lieu of suspension of permit. It would not be necessary to cancel the permit, if the holder of the permit agrees to pay a sum of Rs.2,000/--. Either the transport authority may recover the same from the holder of the permit or he may cancel or suspend the permit. It is further submitted that whatever amount is being paid by the petitioner and collected by the respondent authority is under Sub-Sec.(5) of Sec.86 of the Act.

4. Having heard the learned counsel, it appears to the Court that prima facie the provisions of Sub-Sec.(5) of Sec.86 of the said Act can be invoked only after the competent transport authority issues show cause notice to the permit holder calling upon the permit holder to show cause why the permit in question should not be cancelled or suspended under Sub-Sec.(1) (Clause a, b and e) of Sec.86 of the Act. Hence, the respondents are restrained from collecting any amount of money from the petitioner without initiating proceedings for cancellation or suspension of permit under Clause-a, b or e of Sub-Sec.(5) of Sec.86 of the Act.

5. Mr.D.K.Nakrani, learned counsel for the

petitioner submits that the amount already collected by the authority may be ordered to be refunded.

Such relief cannot be granted at this stage. There is nothing to show that the petitioner had paid the amount under protest or that the petitioner was agreeable to be prosecuted for the breach of the provisions of Section 192-A of the said Act. Hence, the aforesaid direction contained in para-4 above shall be carried out by the respondents prospectively.

6. These petitions are accordingly disposed of in terms of the aforesaid directions. Rule is made absolute to the above extent only with no order as to costs.

[M.S.SHAH,J.]

vrp